

June 29, 2007

Dr. Carol O'Neill Mayhew  
Education Associate, Regulation Review  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

RE: 10 DE Reg. 1758 [Proposed ESY Regulations]

Dear Dr. Mayhew:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE) proposal to re-adopt extended school year ("ESY") regulations published as 10 DE Reg. 1758 in the June 1, 2007 issue of the Register of Regulations. As the synopsis indicates, the Department inadvertently omitted the ESY standards when the balance of Regulation 923 was recently adopted. Council has the following observations.

First, the proposed standards are almost identical to those in the current AMSES. This is a favorable approach. It is SCPD's understanding that the Disabilities Law Program (DLP) and Governor's Advisory Council for Exceptional Citizens (GACEC) negotiated the current version with the DOE a decade ago. At that time, the Department was considering adoption of a simple regression/recoupment standard as the sole basis for determining ESY eligibility. The DOE and GACEC agreed to adopt standards guided by the results of a Maryland class action, Reusch v. Fountain, 872 F. Supp. 1421 (D. Md. 1994).

Second, the proposed regulation deletes one of the two "DOE notes" contained in the current regulation. The deleted note recites as follows:

Extended school year services are special education and/or related services provided outside the standard schedule of school days (Title 14, Delaware Code, Section 1703), for the purpose of providing a free appropriate public education to a particular child, per his/her Individualized Education Program (IEP).

The DOE had agreed to incorporate this note after negotiation with the GACEC. Students with classifications of SMH, TMH, autism, deaf-blindness, TBI, or orthopedic disabilities are automatically entitled to more than the normal 180-day school year. See attached Title 14 Del.C. §1703(e)(f). Without the note, the regulations would eviscerate this statutory entitlement and subject such students to individual and inconsistent determinations of ESY eligibility under Section 6.5. Sections 6.4 and 6.5 literally allow services "beyond the normal school year of the

public agency” (180 days) only if students meet the standards in Section 6.5. The DOE inserted the note in the former AMSES to clarify that ESY standards are based on supplementation of the “standard schedule of school days” as defined in Title 14 Del.C. §1703 (which includes the 222-day eligibility for students with classifications of SMH, TMH, autism, deaf-blindness, TBI, or orthopedic disabilities). The “note” is obviously very important and should be reinstated. Alternatively, Section 6.4 could be amended as follows:

“Extended School Year Services” means special education and related services that are provided to a child with a disability beyond the standard schedule of school days (Title 14 Del.C. §1703) in accordance with the child’s IEP, at no cost to the parents of the child, and consistent with DOE standards.

Third, the DOE may wish to consider embellishment of Section 6.7. As the attached February 11, 2002 DOE memo indicates, special education students may be required to attend summer school based on low DSTP scores. The DOE could consider amending the second sentence in Section 6.7 as follows:

Normally scheduled summer school programs, *including remedial DSTP-related summer school programs offered pursuant to 14 DE Admin Code 100*, may be an option for providing extended school year services if such programs can meet the individual needs of each child, as identified in the child’s IEP.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

Sincerely,

Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

cc: The Honorable Valerie Woodruff  
Ms. Jean Allen  
Ms. Martha Toomey  
Ms. Paula Fontello, Esq.  
Ms. Mary Cooke, Esq.  
Ms Jennifer Kline, Esq.  
Ms. Susan Keene Haberstroh  
Mr. Charlie Michaels  
Mr. Jack Jadach  
The Arc of Delaware  
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